

## CHAPTER III.

## OF GOVERNMENT PROPERTY AND ITS ACQUISITION.

§ 1.—*The Government as successor to the East India Company.*

Just as property may be acquired, held and transferred by individuals, so it may by the public; that is to say, the Government representing the public rights and public welfare, may be the owner of property; and this property may be left to it by will, may be acquired by purchase, and may originate in conquest or simple taking possession and maintaining it for a long course of years, just in the same way as private or individual property.

In India the Government derives the means of paying its servants and supporting its armies, its police and other branches of service from its land revenue and other taxes. But besides this, it possesses, *as proprietor*, various estates and properties which it has acquired, and still acquires, in various ways.

When the "Act for the better Government of India" was passed in 1858<sup>1</sup>, there was a great deal of property which was held by the East India Company as a corporate body, and such property was, like the property of any one else, liable to execution and to other processes of the Courts of Law. In the same way the Company could sell or mortgage such property and enter into contracts with any private person.

On the passing of the Act above named, all such property became vested in the Queen for the purposes of the Government of India<sup>2</sup>.

In India, therefore, the Secretary of State in Council, as succeeding to the East India Company, can sue and be sued just as the

<sup>1</sup> 21 & 22 Vic., Cap. 106.

<sup>2</sup> *Ibid.*, section 39.

Company could<sup>3</sup>; and property in land, money, goods, stores, and other "real and personal estate," which belonged to the Company and became vested in the Queen under the Act, or has been acquired for the purposes of Government, is liable "to the same judgments and executions as it would, while vested in the Company, have been liable in respect of debts and liabilities lawfully contracted and incurred by the said Company." This of course applies to property which Government holds as any private person or corporate body might hold, and does not refer to property which is held in its Sovereign capacity or as the Public Trustee (if I may use the phrase), as, for instance, the proceeds of revenue and taxes in the treasury, the ground occupied by the Grand Trunk Road, a military fort or barrack, a public office, or a Government hospital<sup>4</sup>.

### § 2.—*Right by conquest.*

As some of what is "Government property" at the present time, has come to be so from the rights of former rulers, I may here conveniently introduce a brief notice of the principle on which property passes in the case of provinces that have come under British rule by conquest.

The modern law of nations does not recognise the earlier idea that on conquest, the captors become possessed of *all* property in the conquered State. *Private* property is not considered as interfered with, still less as being annihilated or transferred. When a province passes under British rule, the political system—the form of

<sup>3</sup> *Ibid*, section 65. In this respect India is different from England. The Crown cannot be sued in England; but there is a procedure which is practically a suit though called a "petition of right," being heard in Court with argument by Counsel, &c.

<sup>4</sup> And among such property, held as a sort of public trust, would, I think, be included a forest managed by Government under the Forest Law. The placing of forests under the Act is made to depend on the forest being the property of Government, or the Government having rights in it. In some cases this property may have come down to it as a *special property*, in a way that will presently appear. But more commonly Government has a property in the forest by virtue of a Sovereign right in waste uncultivated land, which will be described further on. All *such* forests; at any rate, would be property held in a Sovereign capacity.